

July 14, 2005

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Ms. Rini Ghosh  
Attorney-Advisor  
Section of Environmental Analysis  
Surface Transportation Board  
Room 504  
1925 K Street, NW  
Washington, DC 20423

Re: AB-6 Sub-No. 428 X  
BNSF Railway Company – Abandonment Exemption – in Colfax County, NM

Dear Ms. Ghosh:

I am writing this letter on behalf of Vermejo Park, LLC (“Vermejo”) in regard to the above-referenced matter. Vermejo owns the land underlying and adjacent to a portion of the rail line Burlington Northern Santa Fe Railway (“BNSF”) seeks exemption to abandon, and is therefore, a party with significant interest in the proposed abandonment.

Vermejo owns and operates the Vermejo Park Ranch, a ranch consisting of 588,000 acres in New Mexico. In June 1997 the Turner Endangered Species Fund (the “Fund”) was created to protect imperiled species and their habitats at various properties, including Vermejo Park Ranch. For instance, at Vermejo Park Ranch, the Fund has built a captive rearing facility for the black footed ferret; worked to expand black-tailed prairie dog numbers; worked towards recovery of the Southern Rocky Mountain gray wolf; built a migration barrier to protect Rio Grande cutthroat trout; and commissioned a white paper to assess the suitability of Vermejo Park Ranch for Mexican Spotted Owls.

The U.S. Fish and Wildlife Service (“FWS”) found several federally listed endangered and threatened species and species of concern in Colfax County. FWS cited two (2) endangered species, four (4) threatened species, and thirteen (13) species of concern in the area. As a result of this and other concerns, SEA recommended a condition that BNSF be required to consult with FWS prior to beginning salvage activities.

Vermejo has reviewed the environmental materials submitted by BNSF and has serious concerns with the planned salvage activities and the detrimental effect they may have on Vermejo property. First, it is Vermejo’s understanding from the Environmental Assessment (“EA”) issued by the Section of Environmental Analysis (“SEA”) and BNSF’s environmental filings and correspondence that the salvage activities will not

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include removal of the roadbed ballast. There is a distinct possibility that the ballast is contaminated with fuel and lubricant leak residuals and brake fluid residuals. In addition, the subject rail line once served a coal mine located in York Canyon, and therefore the ballast may contain coal particles and related overburden materials including pyritic materials and other acid generating materials. The ballast may also contain arsenic as a result of the coal traffic. BNSF's environmental filings do not include any analysis of any such materials in the ballast or the environmental impact of not removing the ballast. Leaving the ballast intact while performing salvage of other track materials could agitate and disrupt the underlying ballast, causing contamination to adjacent land. Therefore, Vermejo respectfully requests that the SEA recommend a condition requiring BNSF to remove all the ballast as part of its salvage activities.

Second, as set forth in the EA, BNSF plans to remove some of the culverts as part of its salvage activities. BNSF has not specified which culverts it plans to remove. Vermejo is concerned that if some but not all of the culverts are removed; the remnants of the drainage system may not function properly. This could detrimentally impact drainage on Vermejo property. Based on environmental comments submitted by the U.S. Army Corps of Engineers ("Corps"), the removal of culverts and surrounding earth may require reshaping of the stream bed and banks. As a result, the SEA recommended a condition requiring BNSF to consult further with the Corps prior to beginning salvage activities. FWS recommended that the Corps be contacted regarding permitting requirements under Section 404 of the Clean Water Act if salvage activities impacted floodplains or wetlands to ensure no net loss of wetlands function and value. Based on this and other FWS concerns, SEA recommended a condition requiring BNSF to consult with FWS prior to beginning salvage activities. Moreover, the Colfax County Floodplain Manager submitted comments indicating that portions of the rail line lay in Zone A of the floodplain designated on the Flood Insurance Rate Maps. (Zone A refers to areas of the 100-year floodplain where base elevations and flood hazard factors are not determined). Other portions of the rail line are in either Zone C or Zone D, which are areas of minimal flooding or undetermined, but possible flood hazards. Accordingly, the SEA recommended a condition that BNSF consult further with Colfax County prior to beginning salvage activities. The SEA further recommended a condition requiring BNSF, prior to beginning salvage activities, to consult with the U.S. Environmental Protection Agency and the New Mexico Environment Department regarding National Pollutant Discharge Elimination System requirements for its final salvage plans and to report the results to SEA. Given the significant concerns expressed by various agencies related to drainage issues in the area and the resulting number of conditions recommended by the SEA, Vermejo respectfully requests that the SEA also recommend a condition requiring BNSF to consult with Vermejo prior to commencing salvage activities regarding the culverts it plans to remove and the drainage system generally.

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Third, as specified in the EA, BNSF plans to remove bridges as part of its salvage operations. BNSF has not specified which bridges it plans to remove, nor has it specified which other structures, if any, it plans to remove. Also, BNSF has not specified the process it will utilize to remove such bridges and structures. Because there are potential safety and liability concerns for Vermejo as the property owner, Vermejo respectfully requests that the SEA recommend a condition requiring BNSF to consult with Vermejo prior to commencing salvage activities regarding which bridges and structures it plans to remove and the processes it plans to utilize to remove them.

Respectfully submitted,

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/s/

Kevin M. Sheys  
**Attorney for Vermejo Park, LLC**

cc: Victoria Rutson, Chief, Section of Environmental Analysis